

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
RICARDO AGUSTIN TOME,)	Case No. 02-22166 DEC
SSN: 527-23-0172)	
)	Chapter 7
Debtor.)	
)	
GRAND PRIX MOTORSPORTS, INC.,)	
)	
Plaintiff,)	
)	Adversary No. 02-1567 HRT
v.)	
)	
RICARDO AGUSTIN TOME)	
)	
Defendant.)	

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

This case comes before the court on Plaintiff's Motion for Summary Judgment. For the reasons that follow, the Court denies the Motion.

"The doctrine of collateral estoppel precludes relitigation of issues actually and necessarily decided in a prior action. It can only be applied to subsequent actions when (1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action. Hence, before [a plaintiff] can invoke the doctrine as to the issue of dischargeability in this action, [it] must demonstrate that the above-outlined four criteria have been met." *Lombard v. Axtens (In re Lombard)*, 739 F.2d 499, 502 (10th Cir. 1984) (internal citations omitted).

The Plaintiff in this matter relies on a default judgment entered in the District Court of Arapahoe County, Colorado, which entered judgment against Defendant on the basis of fraud. The entry of a default judgment is not an adjudication on the merits of Plaintiff's fraud action, therefore, it is not entitled to preclusive effect in this Court. *See, e.g., McCart v. Jordana (In re Jordana)*, 216 F.3d 1087, 2000 WL 783401 (10th Cir. 2000) ("[T]he general rule [is] that a default judgment will not be granted preclusive effect because none of the issues was actually litigated."); *Hoyt v. Mathias (In re Mathias)*, 2000 WL 936345 (Bankr. D. Colo. 2001) ("Where, as here, there was no participation in the state

court proceeding by the Defendant, no discovery conducted and no evidence of ‘fraud’ presented, the matter was not ‘actually litigated’ by way of the default judgment.”). Therefore, it is

ORDERED that Plaintiff’s Motion for Summary Judgment is hereby DENIED.

Dated this 5th day of August, 2003.

BY THE COURT:

/s/ Howard Tallman
Howard R. Tallman, Judge
United States Bankruptcy Court